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P.O. BOX 203518
AUSTIN, TX 78720

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN TEDJAMULIA, CHRISTOPHER CRAIG COLLINS,
RONALD VINCENT ROSE, and MANISH C. MEHTA

Appeal 2016-004658¹
Application 12/951,592²
Technology Center 3600

Before NINA L. MEDLOCK, TARA L. HUTCHINGS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants' Appeal Brief ("Br.," filed October 6, 2015) and the Examiner's Answer ("Ans.," mailed February 2, 2016) and Final Office Action ("Final Act.," mailed May 7, 2015).

² Appellants identify Dell Products L.P. as the real party in interest. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relate[s] generally to information handling systems" and, more specifically, to "a method and system for conducting electronic commerce within a social media environment" (Spec. ¶ 1).

Claims 1, 7, and 13 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implementable method for conducting electronic commerce within a social media environment comprising:

receiving input data from a first user, wherein the input data comprises activity data associated with an activity performed by the first user at a social commerce site, the social commerce site comprising a social commerce storefront embedded within a social media site;

processing, via a computer system, the activity data to generate a social commerce activity value, the social commerce activity value comprising a subject tag activity value, the subject tag activity value comprising a quantitative value assigned to a subject tag activity, the subject tag activity comprising a social media activity performed in association with a subject tag, the social media activity being associated with the social media site;

processing, via the computer system, the social commerce activity value with an existing social commerce reputation score associated with the first user to generate a current social commerce reputation score for the first user; and

displaying, via the computer system, the current social commerce reputation score for the first user within a user interface.

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gupta (US 2008/0109491 A1, pub. May 8, 2008).

ANALYSIS

Non-Statutory Subject Matter

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories., Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that

“transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

See Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1336 (Fed. Cir. 2016).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner finds that the claims are directed to “the abstract idea of a method of organizing human activities regarding human social interaction on a website”; that the additional hardware elements or combination of hardware elements in the claims, other than the abstract idea, amounts to no more than: mere instructions to implement the idea on a computer, and recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry; and that, viewed as a whole, these additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent-eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself (Final Act. 4).

Appellants note that the Supreme Court in *Alice* identified a plurality of examples of abstract ideas, and ostensibly argue that the claims of the present application are patent-eligible because the claims are “unlike any of the examples identified by the Court” (Br. 3–4).

There is no dispute that the Court in *Alice* provides several broad examples of what might constitute an “abstract idea,” including (1) fundamental economic practices; (2) certain methods of organizing human activities; (3) “an idea of itself”; and (4) mathematical relationships or formulae. *Alice Corp.*, 134 S. Ct. at 2350, 2356. But there is no indication in *Alice* that these examples were intended to be exhaustive, as opposed to providing a broad framework within which an analysis of patent-eligibility should be conducted.

Even were that not so, we agree with the Examiner that the claims at issue here are directed to “‘organizing human activity’ where the human activities are related to ‘human social interaction on a website’” (Ans. 10). In other words, the claims are not “unlike any of the examples identified by the [*Alice*] Court.”

Turning to the second step of the *Mayo/Alice* framework, Appellants argue that even if the claims are directed to an abstract idea, the claims are nonetheless patent-eligible because the claims provide a substantial improvement over the art in the field of conducting electronic commerce within a social media environment (Br. 4). That argument is not persuasive, at least because Appellants do not identify the “substantial improvement” that the claims allegedly provide. Instead, Appellants merely quote the claim language, without any further explanation (*id.*).

We also cannot agree with Appellants that the Examiner’s “rejection analysis has failed to meet the second step of the [*Mayo/Alice*] test,” and that a *prima facie* showing of patent-ineligibility has not been established (*id.* at 4–5).

The Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has, thus, held that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for the rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original) (quoting 35 U.S.C. § 132). Thus, all that is required of the Office is that it set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when the rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

Here, in rejecting the pending claims under § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the Final Office Action was mailed. The Examiner, thus, notified Appellants of the reasons for the rejection “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. And, we find that, in doing so, the Examiner set forth a prima facie case of patent-ineligibility.

Moreover, to eliminate any possible confusion, the Examiner provided a further explanation and analysis in the Answer, treating claim 1 as exemplary and specifically labeling the claim elements as “hardware interaction”; “hardware/structure”; and/or “abstract idea,” to “bring clarity” and “make[] it . . . easier [for Appellants] . . . to understand the step 2A analysis” (Ans. 10–12). Appellants did not file a Reply Brief in this case or otherwise further challenge the rejection as failing to set forth a *prima facie* case.

Finally, Appellants summarily assert that the present claims are “more analogous to the claims found to be patent-eligible in *DDR Holdings* [i.e., *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)] than those found non-statutory in *Alice*” (Br. 5). But Appellants offer no persuasive argument or technical reasoning to support that position. Nor do Appellants otherwise explain in what way(s) the present claims are different from those in *Alice* or similar to those in *DDR Holdings* or how these similarities and/or differences impact the *Mayo/Alice* analysis.

We are not persuaded, for the reasons set forth above, that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

Obviousness

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claims 1, 7, and 13 under 35 U.S.C. § 103(a) at least because Gupta does not disclose or suggest “receiving input data from a first user . . . compris[ing] activity data associated with an activity performed by the first user at a social commerce site . . . comprising a social commerce

storefront embedded within a social media site,” as recited in claim 1, and similarly recited in claim 7 and 13.

Gupta is directed to a method and system for evaluating the quality of a contribution made by a user in a distributed online community, and describes that the quality of the contribution is assessed by creating a reputation profile of the user across multiple online communities; the reputation profile contains a reputation score (indicating the credibility of the user, user identification information, user participation statistics, and user contribution information), which is calculated based on the feedback provided by other users for the contribution made by the user (Gupta, Abstract). Gupta defines the term “contribution” as any input provided by the user in an online community, and defines “contribution score” as an index, e.g., a numerical value, that represents the quality of a contribution made by a user (*id.* ¶¶ 30–31).

In rejecting claims 1, 7, and 13 under 35 U.S.C. § 103(a), the Examiner takes the position that any contribution provided by a user would qualify as “activity data” and that an online community encompasses a social commerce site (Final Act. 5 (citing Gupta ¶ 30)). Yet the Examiner explicitly acknowledges that “**Gupta** does not disclose as part of its system where the online community might be found or explicitly the type of website to be used” (*id.*).

The Examiner notes that Gupta discloses, in the Background section, that reputation management systems are used by major websites, e.g., YAHOO!, GOOGLE, SLASHDOT, EBAY, AMAZON.COM and DIGG, and summarily asserts that “at least one and/or a combination of these websites is representative of *a social commerce site comprising of a social*

commerce storefront embedded within a social media site” (*id.* at 5–6). But the Examiner offers no evidence or technical reasoning to support this position.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claims 1, 7, and 13 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner’s rejection of dependent claims 2–6, 8–12, and 14–20.

DECISION

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED